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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION
FCC 93M-588
SEP 16 4 22 PM '93

In re Applications of)	MM Docket No. 93-216
)	
DOUBLE W, INC.)	File No. BPH-920506MD
)	
DON TIMMERMAN BROADCASTING, INC.)	File No. BPH-920507MA
)	
For Construction Permit for a)	
New FM Station on Channel 253)	
in Cedar Falls, Iowa)	

DISPATCHED BY

MEMORANDUM OPINION AND ORDER

Issued: September 14, 1993; Released: September 16, 1993

1. Under consideration are a "Joint Motion for Approval of Settlement Agreement and to Hold Procedural Dates in Abeyance"¹ filed by Double W, Inc. (Double) and Don Timmerman Broadcasting, Inc. (Timmerman) on August 11, 1993; "Supplement to Joint Motion for Approval of Settlement Agreement" filed by Double and Timmerman on August 30, 1993; "Petition for Leave to Amend" filed by Double and Timmerman on August 30, 1993; and the "Mass Media Bureau's Consolidated Comments in Support of Joint Motion for Approval of Settlement Agreement and Petition for Leave to Amend" filed by the Bureau on September 3, 1993.

2. Double and Timmerman have entered into a settlement agreement to resolve this proceeding and have submitted such agreement for approval. Pursuant thereto, Double and Timmerman have agreed to merge their interests through the formation of a new corporation which will be the surviving applicant in this proceeding. The new corporation, Thin Air Investments, L.C. (Thin Air), will have as its principals Double's four stockholders, Timmerman's sole principal, and A. Miller Roskamp, who was not previously a principal in either Double or Timmerman. Double's four principals will each hold a 16 percent interest in Thin Air, with Timmerman and Roskamp each holding an 18 percent interest. The agreement provides that profits and losses will be allocated pro-rata to ownership rights unless otherwise agreed upon by Thin Air's shareholders. Thin Air will assume as obligations of the company the expenses incurred by Double and Timmerman in prosecuting their respective applications. Thin Air proposes to employ as general manager of the station one of Double's principals, and to employ two of Double's other principals and Timmerman's principal as part-time employees. Thin Air will pay those persons' salaries that are commensurate with their duties. Thin Air's shareholders have also entered into a shareholders' agreement which imposes various restrictions on the transfer of shares. Finally, the proposed amendment gives effect to the applicants' settlement agreement by substituting

¹ By Order of the Presiding Judge (FCC 93M-540), released August 20, 1993, the procedural dates previously established were continued pending action on the settlement agreement.

Thin Air for Double and seeks to move Thin Air's transmitting antenna from the location specified in Double's application to an existing tower.

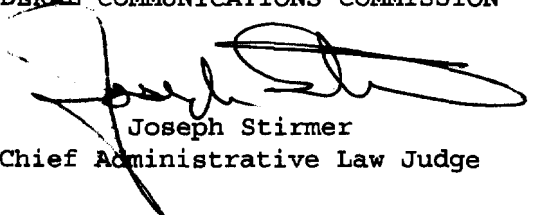
3. The applicants have complied with the provisions of Section 73.3525 of the Commission's rules which implement Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, Double and Timmerman have submitted declarations stating that their respective applications were not filed for the purpose of reaching a settlement. Moreover, the settlement between Double and Timmerman constitutes a bona fide merger whereby the value of the shareholder's interests will be directly related to the success of the new station. Settlement Agreements, 6 FCC Rcd 85 (1990); modified, 6 FCC Rcd 2901, 2902 (1991). Additionally, the shareholders' agreement concerning the transfer of stock provides methods for determining reasonable valuations of stock in any future stock sales. The settlement agreement represents a bona fide business arrangement, and its approval will serve the public interest.

4. The petition for leave to amend is necessary to implement the applicants' settlement agreement. It substitutes Thin Air for the Double application and the necessary information relating to the new entity is provided. Moreover, the relocation of the applicant's antenna to an existing structure has been determined by the Bureau to be in conformance with the Commission's technical rules.² Thus, the petition will be granted and the amendment accepted.

Accordingly, IT IS ORDERED that the "Petition for Leave to Amend" filed by Double W, Inc., on August 30, 1993, IS GRANTED, and the amendment consisting of an FCC Form 301 substituting Thin Air for Double, a revised integration proposal, and a modified engineering proposal IS ACCEPTED;

IT IS FURTHER ORDERED that the "Joint Motion for Approval of Settlement Agreement and to Hold Procedural Dates in Abeyance"³ filed by Double W, Inc., and Don Timmerman Broadcasting, Inc., on August 11, 1993, and supplemented on August 30, 1993, IS GRANTED; the settlement agreement IS APPROVED; the application of Don Timmerman Broadcasting, Inc. (File No. BPH-920507MA) IS DISMISSED, with prejudice; the application of Thin Air Investments, L.C. (previously Double W, Inc. (File No. BPH-920506MD)), as modified, for a construction permit to build a new FM station on Channel 253 in Cedar Falls, Iowa, IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph Stirmer
Chief Administrative Law Judge

² Because the applicant will locate the antenna on an existing tower, no FAA approval is required.

³ See, Footnote 1, above.